

1 Mr. Thomas C. Brayton  
 2 JONES, MAHONEY, BRAYTON & SOLL  
 3 150 West First Street, Suite 280  
 4 Claremont, CA 91711  
 (909) 399-9977

5 Attorneys for Respondent

**FILED**

AUG 31 1998

Commission on  
 Judicial Performance

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

13 Inquiry Concerning Judge Walter L. Blackwell, III )  
 14 No. 150 )

**RESPONSE TO NOTICE  
 OF FORMAL PROCEEDINGS**

17 To the California Commission on Judicial Performance:

18  
 19 Judge Walter L. Blackwell, III, responds to the Notice of Formal Proceedings as follows:

20 (1) Answering unnumbered paragraph one, Respondent admits the allegations of said  
 21 paragraph. Respondent affirmatively alleges that the Commission does not have  
 22 jurisdiction over a judge for alleged acts occurring prior to becoming a judge.

23  
 24 (2) Answering unnumbered paragraph two, Respondent admits the allegations of said  
 25 paragraph.

26 (3) Answering unnumbered paragraph three, Respondent:

27 (A) Admits the first sentence:  
 28

1 (B) Admits the negotiation of the said checks and except as admitted, denies the  
2 remaining allegations of said sentence. Respondent affirmatively alleges that at the  
3 time of the negotiation of the checks, Fidelity Federal Bank was indebted to  
4 Respondent for attorneys fees it had contracted to pay, but unlawfully failed and  
5 refused to pay to Respondent for his representation of a former officer of Fidelity.

6 (C) Admits the allegations in the third sentence.

7  
8 (4) Answering unnumbered paragraph four, Respondent admits the allegations of said  
9 paragraph.

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11 (5) Answering unnumbered paragraph five, Respondent:

12 (A) Admits the allegations in the first sentence;

13 (B) Admits the allegations in the second sentence;

14 (C) Admits the allegations in the third sentence;

15 (D) Answering the allegations of the fourth sentence, admits that Fidelity asked during  
16 settlement negotiations if Respondent knew of any claims Fidelity might have  
17 against Respondent. Respondent denies the remaining allegations of said sentence;

18 (E) Answering the allegations of the fifth sentence, Respondent admits the allegations  
19 of said sentence;

20 (F) Answering the allegations of the sixth sentence, Respondent admits the allegations  
21 of said sentence.

22 (6) Answering unnumbered paragraph six, Respondent:

23 (A) Admits the allegations of the first sentence;

24 (B) Admits the allegations of the second sentence;

25 (C) Admits that the amount of the checks alleged in the third sentence were eventually

1 agreed upon in settlement of Respondent's claim in addition to the mutual general  
2 release;

3  
4 (D) Admits the allegations of the fourth sentence;

5 (E) Admits the allegations of the fifth sentence;

6 (7) Answering the allegations of unnumbered paragraph seven, Respondent:

7 (A) Admits the allegations of the first sentence;

8 (B) Admits the allegations of the second sentence;

9 (C) Admits the allegations of the third sentence;

10 (D) Admits the allegations of the fourth sentence;

11 (E) Admits the allegations of the fifth sentence;

12 (F) Admits the allegations of the sixth sentence;

13  
14  
15 (8) Answering the allegations of unnumbered paragraph eight, Respondent:

16 (A) Admits the allegations of the first sentence;

17 (B) Admits the allegations of the second sentence;

18 (C) Admits the allegations of the third sentence;

19 (D) Admits the allegations of the fourth sentence;

20 (E) Admits the allegations of the fifth sentence;

21  
22 (9) Answering the allegations of unnumbered paragraph nine, Respondent admits the  
23 allegations of said paragraph.

24 (10) Answering the allegations of unnumbered paragraph ten, Respondent denies all of the  
25 allegations of said paragraph.  
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**AFFIRMATIVE DEFENSES****First Affirmative Defense**

- (11) Article VI, Section 18(d) of the California Constitution does not empower the Commission on Judicial Performance to discipline judges for conduct occurring prior to their assuming office as a judge.

**Second Affirmative Defense**

- (12) The matter involving Judge Blackwell was a civil matter resolved by civil litigation and a judgment prior to his taking office as a judge.
- The Commission does not have jurisdiction to discipline a judge for such conduct.

**Third Affirmative Defense**

- (13) Even assuming that the Commission has jurisdiction over the present matter, which it does not, the facts alleged do not constitute conduct prejudicial to the administration of justice.

**Fourth Affirmative Defense**

- (14) The Commission does not have jurisdiction to determine matters under Business and Professions Code section 6106.

**Fifth Affirmative Defense**

- (15) The Commission does not have jurisdiction to discipline a presently sitting judge based upon an alleged violation of the California Code of Judicial Ethics for conduct alleged to have occurred prior to assuming office as a judge. In other words, the Code of Judicial

1 Ethics applies to a Judge's conduct during the time he or she is sitting as a judge - it does  
2 not apply to the conduct of a person before he or she became a judge.  
3

4 Dated: August 31, 1998

JONES, MAHONEY, BRAYTON & SOLL

5  
6 By: Thomas C. Brayton  
7 Thomas C. Brayton  
8 Attorneys for Respondent  
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**VERIFICATION  
SAN BERNARDINO**

STATE OF CALIFORNIA COUNTY OF

I have read the foregoing

Respondent's Response to Notice of Formal proceedings

and know its contents.

☒ CHECK APPLICABLE PARAGRAPH

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to the matters which are stated on information and belief, and as to those matters I believe them to be true.

☒ I am ☐ an Officer ☐ a partner ☐ a \_\_\_\_\_ of \_\_\_\_\_

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for \_\_\_\_\_

a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on August 31 1998 at Fontana California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

William L. Blackwell, III

Type of Print Name

Signature

**PROOF OF SERVICE**

1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF

☐ BY MAIL

I am employed in the county of \_\_\_\_\_, State of California.

I am over the age of 18 and not a party to the within action; my business address is: \_\_\_\_\_

On \_\_\_\_\_, 19\_\_\_\_, I served the foregoing document described as \_\_\_\_\_

☐ \_\_\_\_\_ on \_\_\_\_\_ in this action

☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

☐ \*I deposited such envelope in the mail at \_\_\_\_\_, California.

The envelope was mailed with postage thereon fully prepaid.

☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing.

Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at \_\_\_\_\_ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_, California.

☐ \*(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_, California.

☐ (State) I declare under penalty of perjury under the laws of the State of California and of my own personal knowledge that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type of Print Name

Signature

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 150 West First Street, Suite 280, Claremont, California 91711.

On August 31, 1998 I served the foregoing document described as

**RESPONSE TO NOTICE OF FORMAL PROCEEDINGS**

on the parties in this action by placing true copies thereof in sealed envelope(s) addressed as follows:

Mr. Rick Schickele, Commission Counsel  
Commission on Judicial Performance  
101 Howard Street, Suite 300  
San Francisco, CA 94105

Mr. Jack Coyle, Trial Counsel  
Commission on Judicial Performance  
101 Howard Street, Suite 210  
San Francisco, CA 94105

by fax to 415-904-3666

by fax to 415-904-5510

☒ **(BY MAIL)** I caused such envelope with postage thereon fully prepared to be placed in the U.S. mail at Claremont, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **(BY PERSONAL DELIVERY)** I delivered such envelope by hand to the office of the addressee(s) noted above.

☒ **(BY FACSIMILE TRANSMISSION)** I caused such document to be transmitted to the addressee(s) facsimile number noted above. The facsimile machine I used complied with Rule 2003(3) and the transmission was reported as complete and without error. Pursuant to Rule 2005(i), I caused the machine to print a transmission record of the facsimile transmission, a copy of which is attached to this declaration.

Executed on August 31, 1998 at Claremont, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and, that I am employed in the office of a member of the bar of this court at whose direction the service was made.

RECEIVED

AUG 31 1998

COMMISSION ON  
JUDICIAL PERFORMANCE

FAX (909) 399-6969

## JONES, MAHONEY, BRAYTON &amp; SOLL

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

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CLAREMONT, CALIFORNIA 91711

(909) 399-9977

THOMAS C. BRAYTON  
PAUL M. MAHONEY  
STEPHEN C. JONES  
RICHARD A. SOLL  
A PROFESSIONAL CORPORATION

## FAX COVER

TO: Commission on Judicial Performance  
Rick Schickele, Commission Counsel  
Fax No. (415) 904-3666

FM: Thomas C. Brayton

Re: Inquiry Concerning Judge Walter L. Blackwell, III, No. 150

NO. OF PAGES INCLUDING THIS COVER PAGE: 9

**Letter of August 31, 1998 and a Response to Notice of Formal Proceedings**

Please call Carole M. Ramaley or Thomas C. Brayton at (909) 399-9977 (or 399-0979 after 5:00 p.m.), if not all of the pages indicated are received.

**JONES, MAHONEY, BRAYTON & SOLL**

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ATTORNEYS AT LAW

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FAX (909) 399-5956

Please Reply To:  
P. O. Box 940  
Claremont, CA 91711

August 31, 1998

**BY FAX AND BY MAIL**

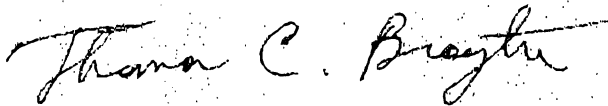
Mr. Rick Schickele, Commission Counsel  
Commission on Judicial Performance  
100 Howard Street, Suite 300  
San Francisco, CA 94105

Re: **Inquiry Concerning Judge Walter L. Blackwell, III, No. 150**

Dear Mr. Schickele:

I am sending you by fax today (with a copy to Jack Coyle), our Response to Notice of Formal Proceedings. The original and one copy are being sent to you by mail. Please date stamp the copy when received and send it to our office in the self-addressed stamped envelope.

Very truly yours,



Thomas C. Brayton  
of  
JONES, MAHONEY, BRAYTON & SOLL

Encls.

cc: Mr. Jack Coyle (with enclosure)